

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS No 1150 & 1151 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

HUMPHERY & COLMAN

Versus

UNION OF INDIA

Appearance:

MR MIHIR H JOSHI for Petitioner
MR PB MAJMUDAR for Respondent No. 1
MR MR SHAH for Responent Nos.2 to 4
NOTICE SERVED BY DS for Respondent No. 2, 4

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.L.DAVE

Date of decision: 08/03/99

ORAL COMMON JUDGEMENT

RULE. At the request of the learned Advocates for the parties, these matters are taken up today and heard finally.

The learned Advocates for the petitioners have submitted that the impugned orders which are passed in these matters by the Commissioner (Appeals) are not speaking orders and in absence of speaking orders, it is not possible for them to challenge the said orders.

2. In view of the law laid down by the Apex Court as well as this Court, it is open for the quasi judicial authority exercising the powers under Section 35F of the Central Excise and Salt Act, 1944 to pass an order in an application on merits without hearing the Advocate or the party concerned. It is equally open for the quasi judicial authority to give an opportunity if it thinks fit. However, when an application is disposed of, a speaking order must be passed. In the case of M/s Ratan Enterprise, being Special Civil Application No.6829 of 1997, the Division Bench, after hearing the Counsel, issued a direction to rehear the the application for stay made by the petitioner and to pass appropriate speaking order thereon. Under these circumstances, it is directed that the Commissioner of Central Excise and Customs (Appeals) shall decide the applications afresh and shall pass speaking orders on the applications submitted by the petitioners for stay.

3. It is required to be noted that in these matters, orders of attachments have also passed. In view of the order which we have passed today, the orders of attachment in each matter stands set aside.

Rule is made absolute. No order as to costs.

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msp.